

ESTTA Tracking number: **ESTTA181947**

Filing date: **12/19/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	E. & J. Gallo Winery		
Entity	Corporation	Citizenship	California
Address	600 Yosemite Boulevard Modesto, CA 95354 UNITED STATES		

Correspondence information	Paul W. Reidl Associate General Counsel E. & J. Gallo Winery 600 Yosemite Boulevard Modesto, CA 95354 UNITED STATES paul.reidl@ejgallo.com Phone:209-341-4733
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Applicant Information

Application No	78877425	Publication date	11/20/2007
Opposition Filing Date	12/19/2007	Opposition Period Ends	12/20/2007
International Registration No.	NONE	International Registration Date	NONE
Applicant	MIMULANI AG Bahnhofstresse 7 ZUG, CH-6301 SWITZERLAND		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: cognac

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	444756	Application Date	02/11/1946
Registration Date	03/24/1953	Foreign Priority Date	NONE
Word Mark	GALLO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U047 (International Class 033). First use: First Use: 1909/00/00 First Use In Commerce: 1909/00/00 WINES

U.S. Registration No.	891339	Application Date	09/17/1969
Registration Date	05/19/1970	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U047 (International Class 033). First use: First Use: 1909/00/00 First Use In Commerce: 1909/00/00 WINES [AND CHAMPAGNES]		

U.S. Registration No.	1911682	Application Date	06/28/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	GALLO SONOMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1994/06/20 First Use In Commerce: 1994/06/20 wines		

U.S. Registration No.	2231215	Application Date	06/26/1997
Registration Date	03/09/1999	Foreign Priority Date	NONE
Word Mark	GALLO OF SONOMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1997/09/01 First Use In Commerce: 1997/09/01 wines		

U.S. Registration No.	2618424	Application Date	12/05/2001
Registration Date	09/10/2002	Foreign Priority Date	NONE
Word Mark	GALLO FAMILY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2000/01/13 First Use In Commerce: 2000/01/13		

	Wines		
U.S. Registration No.	3128127	Application Date	04/28/2005
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	GALLO FAMILY VINEYARDS		
Design Mark			
Description of Mark	The mark consists of the design of the heads of two roosters and the wording "Gallo Family Vineyards".		
Goods/Services	Class 033. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 WINES		

Attachments	71496376#TMSN.gif (1 page)(bytes) 72338083#TMSN.gif (1 page)(bytes) 75315270#TMSN.gif (1 page)(bytes) 78618997#TMSN.jpeg (1 page)(bytes) Opposition-78877425.pdf (6 pages)(11581224 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pwr/
Name	Paul W. Reidl
Date	12/19/2007

UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application
Serial No. 78877425

Published in the O.G. of November 20, 2007 on TM 978

E. & J. GALLO WINERY,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	NOTICE OF OPPOSITION
MIMULANI AG)	
)	
Applicant.)	
)	

E. & J. Gallo Winery, a corporation organized and existing under the laws of the State of California, believes that it will be damaged by the registration of the trademark shown in Applicant Serial Number 78877425, filed May 5, 2006, and hereby opposes registration of same.

As grounds for opposition, Opposer by its attorney, Paul W. Reidl, respectfully shows and alleges as follows:

1. Opposer is a corporation organized and existing under the laws of the State of California with its principal place of business at 600 Yosemite Boulevard, Modesto, California 95354.
2. At all times here mentioned Opposer has been actively engaged in the production, distribution and sale of wines and other goods in the United States under the trademark and trade name GALLO.

3. Opposer owns all rights in and to, among others, the federal trademark registrations listed below, each of which is valid and subsisting, uncanceled and unrevoked:

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS</u>
GALLO	444,756	3-24-53	Wines
ERNEST & JULIO GALLO	778,837	10-20-64	Wines
GALLO	887,959	03-17-70	Meats/cheese
GALLO	891,339	5-19-70	Wines and Champagnes
GALLO	1,650,478	7-09-91	Corkscrews
JULIO R. GALLO	1,813,967	12-28-93	Wines
ERNEST GALLO	1,815,078	1-4-94	Wines
GALLO SONOMA	1,911,682	8-15-95	Wines
GALLO OF SONOMA	2,231,215	3-9-99	Wines
GALLO	2,320,063	2-20-00	Clothing
GALLO'S FAMILY	2,618,424	2/10/02	Wines
ERNEST & JULIO GALLO	2,794,867	12/16/03	Clothing
GALLO OF SONOMA	2,832,104	4/13/04	Candies and sauces
GALLO OF SONOMA	3,019,620	11/29/05	Olive Oils, jams
GALLO OF SONOMA	3,023,504	12/6/05	Waters
GALLO FAMILY	3,077,733	4/4/06	Olive Oil

GALLO FAMILY VINEYARDS (design)	3,128,127	8/8/06	Wines
GALLO FAMILY VINEYARDS	3,198,966	1/16/07	Clothing
GALLO	3,210,839	2/20/07	Mugs

4. The GALLO family of marks was first used by Opposer in 1933. By virtue of the extensive use and promotion of its GALLO mark, and the widespread sale of its alcoholic beverages under the GALLO mark, the trademark and trade name GALLO has come to be recognized throughout the United States as identifying goods finding their origin in or otherwise associated with Opposer. As a further result of Opposer's use and marketing efforts, and of the widespread recognition of the GALLO mark, this mark has become famous.

5. Opposer first began using the GALLO trademark and trade name in 1933 when Ernest and Julio Gallo founded the company. The GALLO trademark and trade name has been used continuously since that time. Opposer has sold billions of bottles of wine throughout the United States bearing the GALLO trademark and has spent over \$600,000,000 promoting it. Goods bearing the GALLO trademark are sold and promoted to retail consumers nationwide via all available media, including television and radio. They are also heavily promoted, sold and displayed in restaurants and other food service establishments. The GALLO trademark has a high degree of consumer recognition and in the United States stands exclusively for goods made or licensed by Opposer. Courts have held without exception that the GALLO trademark is extraordinarily strong and is entitled to the broadest possible protection.¹

¹ Those cases include *E. & J. Gallo Winery v. Spider Webs Ltd.*, 129 F.Supp. 2d 1033 (S.D. Tex. 2001), *affirmed*, 2002 U.S. App. LEXIS 5928 (5th Cir. 2002); *E. & J. Gallo Winery v. Pasatiempos Gallo, S.A.*, 905 F.Supp. 1403 (E.D. Cal. 1994); *E. & J. Gallo Winery v. Consorzio del Gallo Nero*, 782 F.Supp. 457 (N.D. Cal. 1991); *E. & J. Gallo Winery v. Gallo Cattle Company*, 12 U.S.P.Q.2d 1657 (E.D. Cal. 1989), *affirmed*, 967 F.2d 1280 (9th Cir. 1992).

6. Opposer has vigorously protected its trademark against third party infringement and dilution and has stopped others from using its marks on a wide variety of goods and services, including: habanero sauce, salsa, beer, mezzal, cheese, wine, rice, coffee bags, shoes, sportswear, t-shirts, caps, bar towels, tote bags, jeans, jackets, canned vegetables, pasta, pickled jalapeño peppers, garlic butter, olive oil, dinnerware, tobacco products, toys, potato chips, hosiery, ties and related products, the naming of thoroughbred race horses, playing cards, board games, confetti, poker chips, compact discs, stereo equipment, drafting tables, women's coats, men's hats, cigars, ceramics, veterinary products, sauces, socks and scarves, pasta, and as domain names for web sites. That enforcement program has preserved the effectively exclusive connection between the GALLO trademark and Opposer.

7. The mark herein opposed comprises the word GALLISS. The applied-for mark is very similar to Opposer's famous GALLO family of marks. The marks are similar in sight, sound, and appearance. The goods and channels of trade are similar.

8. The use and registration of Applicant's mark is likely to cause substantial confusion among consumers and to damage Gallo.

9. The GALLO trademark was distinctive long before Applicant adopted his mark. Opposer has used the GALLO trademark for more than 70 years and has spent over \$600,000,000 promoting it. Wines bearing the GALLO trademark have been sold and advertised for decades in all channels where it can be done so lawfully. The GALLO trademark is well known to consumers, the trade, and Applicant. The GALLO brand stands uniquely for goods produced or licensed by Opposer. It is famous.

10. The GALLO trademark is extraordinarily strong and distinctive. The dominant portion of applicant's mark is identical to Opposer's famous mark. Gallo is the exclusive user of

a GALLO mark in the United States and its mark is known to 80% of the general consuming public.

11. The registration of Applicant's mark for the goods recited in the application would be inconsistent with Opposer's rights in its GALLO marks and will cause damage to Opposer. It will impair the distinctiveness of the famous GALLO mark and is likely to cause dilution by blurring.

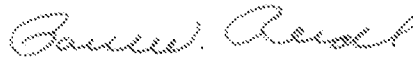
12. On information and belief, Applicant did not have a bona fide intent to use the mark in commerce since at least as early as the filing date of the application.

WHEREFORE, it is respectfully prayed that this opposition be sustained and that the mark which is the subject of Serial No. 78877425 be denied registration.

The opposition fee in the sum of \$300.00 is filed herewith.

Dated: December 18, 2007

E. & J. GALLO WINERY

By 
Paul W. Reidl
600 Yosemite Boulevard
Modesto, California 95354
(209) 341-4733

PROOF OF SERVICE

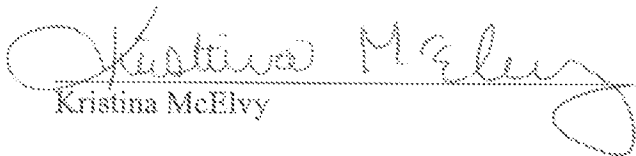
I am employed in the County of Stanislaus, State of California. I am over the age of 18 and not a party to the within action. My business address is 600 Yosemite Boulevard, Modesto, California, 95354.

On December 19, 2007, I caused to be served the foregoing document described as follows: **Notice of Opposition** on the Defendant in this action by placing a true copy thereof enclosed in an envelope, by certified mail, addressed as follows:

Mark Lebow
Young & Thompson
745 23rd Street S
Suite 200
Arlington, VA 22202-2400

I am "readily familiar" with the company's practice of collection and processing correspondence for mailing. Under that practice, it is deposited with the U. S. postal service on that same day in the ordinary course of business.

Executed on December 19, 2007, at Modesto, California.



Kristina McElvy